

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

MAY 22 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Proposed Revisions of Maximum Collection)
 Amounts for Schools and Libraries and)
 Rural Health Care Providers)

CC Docket No. 96-45
 Public Notice DA 98-872

To: The Commission

COMMENTS
 OF
THE AMERICAN PETROLEUM INSTITUTE

The American Petroleum Institute^{1/} ("API"), by its attorneys, hereby submits its Comments in response to the Public Notice released in the instant proceeding on May 13, 1998 by the Common Carrier Bureau of the Federal Communications Commission ("Commission") DA 98-272.

^{1/} API is a national trade association representing approximately 300 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing, and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as spokesperson before federal and state regulatory agencies. The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries.

RESPONSE TO PUBLIC NOTICE

1. The most noteworthy aspect of the Public Notice is Commissioner Furchtgott-Roth's Separate Statement. API shares the view that Congress envisioned a less expansive program to support schools, libraries and rural healthcare providers, and supports a broad-based re-examination of the programs as proposed by Commissioner Furchtgott-Roth. The Separate Statement highlights that there is an unfortunate and unnecessary tension between even a reasonably expansive view of the new and expanded support programs enacted as part of the Telecommunications Act of 1996, and the increase in overall telecommunications costs for the vast majority of all users as a result of access charge restructuring and pass-throughs of universal service fund ("USF") assessments by carriers.^{2/} The reason for this tension is that interstate access rates are set far too high.

2. The Commission made a number of significant steps in connection with access charge reform last year. Fundamentally, however, in the *Price Caps* proceeding^{3/}, the Commission did not set the "X-Factor" or reinitialize rates in a manner that reflects the local exchange carrier's ("LEC") productivity gains with regard to their interstate

^{2/} At least one of the major interexchange carriers has explained in correspondence with users that the USF assessment is most analogous to a tax which the FCC, not Congress, established and maintains that this assessment and the Presubscribed Interexchange Carrier Charge ("PICC") should be passed on to end-users.

^{3/} *In the Matter of Price Cap Performance Review for Local Exchange Carriers; Access Charge Reform*, Fourth Report and Order, CC Docket No. 94-1, Second Report and Order, CC Docket No. 96-262, 12 FCC Rcd 16642 (1997).

services and their current reduced costs of capital. As the CARE coalition has pointed out in recent months in filings and meetings with the Commission's staff, the LECs are experiencing increased rates of return and profitability in substantial measure from an unduly conservative "X-Factor," and a totally unrealistic view of local service competition. The so-called "competitive model" which underlies the Commission's new scheme of access charge regulation is undermined not only by adverse court decisions regarding the Commission's *Local Competition Order*^{4/}, but by economic and marketplace realities that will not change for the foreseeable future.

RECOMMENDATIONS

3. Accordingly, API respectfully urges the Commission to modify the LEC interstate price cap productivity offset, or "X-Factor" at 9.3% using forward-looking economic costing, and to reinitialize interstate access prices using a 9.3% productivity factor.^{5/} In addition, API urges the Commission to issue a Notice of Proposed Rule Making seeking comment on the Commission's existing scheme for interstate access

^{4/} *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499 (1996); *aff'd in part, vacated in part sub nom. CompTel v. FCC*, 11 F.3d 1068 (8th Cir. 1997), *aff'd in part, vacated in part sub nom. Iowa Utilities Board v. FCC*, 109 F.3d 418 (8th Cir. 1997).

^{5/} See also *AT & T Petition for Reconsideration*, CC Docket No. 94-1 (filed July 11, 1998) (petition pending).

charges, and to adopt rules and regulations reducing interstate access charges to just and reasonable rates that reflect actual cost.^{6/}

Respectfully submitted,

AMERICAN PETROLEUM INSTITUTE

By: 

Wayne V. Black
C. Douglas Jarrett
Keller and Heckman LLP
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
(202) 434-4100

Its Attorneys

Dated: May 22, 1998

^{6/} See also *In the Matter of Request for Amendment of the Commission's Rules Regarding Access Charge Reform and Price Cap Performance Review for Local Exchange Carriers*, Joint Petition by Consumers Federation of America, International Communications Association, and National Retail Federation, RM No. 9210 (filed December 9, 1997) (petitions pending).